IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 387 of 1999
WITH
CRIMINAL REVISION APPLICATION NO.389 OF 1999

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

S S THAKKER

Versus

M C BHAVSAR

Appearance:
MR MN MEHTA for Petitioner
MR DR BHATT for Respondent No. 1
MR ND GOHIL, APP for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 27/04/2000

ORAL JUDGEMENT

1. These are two revision applications under section 397 of the Code of Criminal procedure at the instance of the original complainant who had filed two criminal

complaints against the respondent-accused for an offence under section 138 of the Negotiable Instruments Act.

2. During the pendency of the said criminal case the accused gave an application Exh.2 for being discharged from the said cases. By a specific order passed under the very same application viz. "Order below Exh.2", the learned Magistrate, instead of dealing with the application on merits as to whether an order of discharge could or could not be passed, entered into the question of territorial jurisdiction, which was a question not at all in issue in the said application, decided the said question, and directed that the complaint be returned to the complainant for presentation to the proper court.

3. There cannot be any controversy that this approach and attitude of the learned Magistrate is fundamentally wrong, and appears only to be a short-cut to avoid dealing with the application of the accused for discharge.

4. Learned Magistrate ought to have dealt with the application Exh.2, in the context of its averments, and in the context of its prayers. It is obvious that unless the question of territorial jurisdiction has been raised before it by any party, there was no occasion for the learned Magistrate to enter into that arena. The impugned order is, therefore, quashed and set aside, and the trial court is directed to hear and decide the Exh.2 application on its own merits without reference to the question of territorial jurisdiction. This question may be considered, if and when it arises.

4. These revisions are therefore, allowed. Rule is made absolute to the aforesaid extent.

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